

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x :
CHRISTOPHER E. BROWN,

Plaintiff,

-against-

ST. JOHN'S UNIVERSITY and GCA SERVICES
GROUP, INC., and BUTLER ROGERS BASKETT
ARCHITECTS, P.C., and HM WHITE SITE
ARCHITECTS and SKANSKA USA BUILDING,
INC. and LANGAN ENGINEERING AND
ENVIRONMENTAL
SERVICES, INC.,

Defendants

-----x :
ST. JOHN'S UNIVERSITY,

Third-Party Plaintiff,

-against-

GCA SERVICES GROUP, INC., and
BUTLER ROGERS BASKETT,

Third-Party Defendants.

-----x :
BUTLER ROGERS BASKETT,

Fourth-Party Plaintiff,

-against-

HM WHITE SITE ARCHITECTS, SKANSKA USA
BUILDING, INC. and LANGAN ENGINEERING
AND ENVIRONMENTAL SERVICES, INC.,

Fourth-Party Defendants.

-----x :
Civ. Action No. 08-cv-2218 (ARR)

Hon. J. Ross

Hon. M.J. Pohorelsky

**MEMORANDUM OF LAW
IN SUPPORT OF ST.
JOHN'S UNIVERSITY'S
MOTION TO DISMISS
COUNT II OF PLAINTIFF'S
FIRST AMENDED
COMPLAINT**

PRELIMINARY STATEMENT

Defendant/Third-Party Plaintiff ST. JOHN'S UNIVERSITY ("St. John's") moves to dismiss Count II of Plaintiff's First Amended Complaint, pursuant to Fed. R. Civ. P. 12(c), and hereby adopt and incorporate herein the arguments set forth in the motion papers set submitted by co-defendant LANGAN ENGINEERING AND ENVIRONMENTAL SERVICES, INC. ("Langan"). As more fully argued therein, plaintiff's claims are meritless under N.Y. Civil Rights Law § 40-c and §40-d. For these reasons, Count II of plaintiff's First Amended Complaint must be dismissed.

STATEMENT OF FACTS

St. John's refers the Court to defendant Langan's Memorandum of Law in support of its motion to dismiss Count II of Plaintiff's First Amended Complaint for a full recitation of the facts and applicable law.

ARGUMENT

In essence, plaintiff asserts claims under N.Y. Civil Rights Law §40-c and §40-d against all defendants. However, plaintiff's interpretations of these sections are erroneous. As aptly explicated by Langan, §40-d grants a cause of action only against a "person" who commits a discriminatory act prohibited under §40-c. St. John's is undisputedly a private Catholic university and thus, cannot be considered a "person" as contemplated by §40-c. Additionally, plaintiff's counsel failed to properly provide notice to the New York Attorney General of plaintiff's intention to bring a claim against St. John's as required under §40-d. Moreover, Plaintiff's First Amended Complaint fails to allege that any defendant intentionally discriminated against him on the basis of his disability. For these reasons, as more fully set forth in the motion

papers submitted by Langan that are adopted and incorporated herein, St. John's requests that Count II of Plaintiff's First Amended Complaint be dismissed.

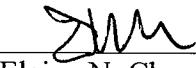
CONCLUSION

For the foregoing reasons, it is respectfully requested that the Court dismiss Count II of Plaintiff's First Amended Complaint prejudice.

Dated: New York, New York
November 23, 2009

Yours, *etc.*,

Biedermann, Reif, Hoenig & Ruff, P.C.

By: 
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TO: ALL COUNSEL OF ECF SERVICE LIST

CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of November, 2009, I electronically filed the foregoing **MEMORANDUM OF LAW IN SUPPORT OF ST. JOHN'S UNIVERSITY'S MOTION TO DISMISS COUNT II OF PLAINTIFF'S FIRST AMENDED COMPLAINT** with the Clerk of Court using the CM/ECF system which will send notification of filing to the following e-mail addresses:

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